



General Assembly

January Session, 2009

Raised Bill No. 1057

LCO No. 4091

04091_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

**AN ACT CONCERNING APPOINTMENT OF COUNSEL AND
GUARDIAN AD LITEMS IN CERTAIN JUVENILE MATTERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-129a of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2009*):

3 In proceedings in the Superior Court under section 46b-129:

4 (1) The court may order the child, the parents, the guardian, or other
5 persons accused by a competent witness with abusing the child, to be
6 examined by one or more competent physicians, psychiatrists or
7 psychologists appointed by the court;

8 (2) [a] (A) A child shall be represented by counsel knowledgeable
9 about representing such children who shall be [appointed by the court]
10 assigned to represent the child by the Chief Child Protection Attorney,
11 or appointed by the court if there is an immediate need for the
12 appointment of counsel during a court proceeding. Counsel for a child
13 under the age of seven shall act as attorney and [to act as] guardian ad
14 litem for the child. Counsel for a child seven years of age or older shall

15 act solely as attorney for the child.

16 (B) The primary role of any counsel for the child, including the
17 counsel who also serves as guardian ad litem, shall be to advocate for
18 the child in accordance with the Rules of Professional Conduct. [When
19 a conflict arises between the child's wishes or position and that which
20 counsel for the child believes is in the best interest of the child, the
21 court shall appoint another person as guardian ad litem for the child.]

22 (C) If the court or counsel for the child determines that the child
23 cannot adequately act in his or her own best interests and the child's
24 wishes, if followed, could lead to substantial harm to the child, the
25 court may order that a separate guardian ad litem be assigned for the
26 child in which case the court shall notify the Chief Child Protection
27 Attorney who shall assign a separate guardian ad litem for the child.
28 The guardian ad litem shall [speak on behalf] perform an independent
29 investigation of the case and provide the court with all information
30 pertinent to the court's determination of the best [interest] interests of
31 the child. [and] The guardian ad litem is not required to be an
32 attorney-at-law but shall be knowledgeable about the needs and
33 protection of children. In the event that a separate guardian ad litem is
34 [appointed] assigned, the person previously serving as counsel or as
35 both counsel and guardian ad litem for the child shall continue to
36 serve as counsel for the child and a different person shall be
37 [appointed] assigned as guardian ad litem, unless the court for good
38 cause also appoints a different person as counsel for the child in which
39 case the court shall notify the Chief Child Protection Attorney who
40 shall assign a different person as counsel for the child. No person who
41 has served as both counsel and guardian ad litem for a child shall
42 thereafter serve solely as the child's guardian ad litem. The counsel
43 and guardian ad litem's fees, if any, shall be paid by the Chief Child
44 Protection Attorney unless (i) the parents or guardian, or the estate of
45 the child, [or, if such persons] are [unable] able to pay, [by the court] in
46 which case the Chief Child Protection Attorney may seek
47 reimbursement for the costs of representation from the parents,

48 guardian or estate of the child, or (ii) the child was found competent to
49 choose, direct and arrange for payment of a qualified attorney of the
50 child's choice, the court found that there was no conflict pursuant to
51 the Rules of Professional Conduct, and such qualified attorney was
52 appointed;

53 (3) [the] The privilege against the disclosure of communications
54 between husband and wife shall be inapplicable and either may testify
55 as to any relevant matter; and

56 (4) [evidence] Evidence that the child has been abused or has
57 sustained a nonaccidental injury shall constitute prima facie evidence
58 that shall be sufficient to support an adjudication that such child is
59 uncared for or neglected.

60 Sec. 2. Section 46b-136 of the general statutes is repealed and the
61 following is substituted in lieu thereof (*Effective October 1, 2009*):

62 (a) In any proceeding in a juvenile matter, the judge before whom
63 such proceeding is pending shall, even in the absence of a request to
64 do so, [provide] appoint an attorney to represent the child or youth,
65 the child's or youth's parent or parents or guardian, or other person
66 having control of the child or youth, if [such] the judge determines that
67 the interests of justice so require, and in any proceeding in which the
68 custody of a child is at issue, [such] the judge shall [provide] appoint
69 an attorney to represent the child and may authorize such attorney or
70 appoint another attorney to represent such child or youth, parent,
71 guardian or other person on an appeal from a decision in such
72 proceeding. For the purpose of determining eligibility for appointment
73 of an attorney under this section, the judge shall cause the parents or
74 guardian of the child or youth to complete a written statement under
75 oath or affirmation setting forth the parents' or guardian's liabilities
76 and assets, income and sources thereof, and such other information as
77 the Commission on Child Protection may require on such form as the
78 commission shall prescribe.

79 (b) If the judge appoints an attorney under this section, the judge
80 shall notify the Chief Child Protection Attorney of the appointment
81 and the Chief Child Protection Attorney shall assign an attorney to
82 represent the party for whom the attorney was appointed.

83 (c) Where, under the provisions of this section, the court so appoints
84 counsel for any such party who is found able to pay, in whole or in
85 part, the cost thereof, the court shall assess as costs against such
86 parents, guardian or custodian, including any agency vested with the
87 legal custody of the child or youth, the expense so incurred and paid
88 by the Commission on Child Protection in providing such counsel, to
89 the extent of their financial ability to do so. The Commission on Child
90 Protection shall establish the rate at which counsel provided pursuant
91 to this section shall be compensated.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2009	46b-129a
Sec. 2	October 1, 2009	46b-136

Statement of Purpose:

To: (1) Clarify the role of an attorney and guardian ad litem in certain child protection cases, and (2) revise provisions concerning the appointment of counsel in certain juvenile matters.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]